

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ROBIN ROSEBOROUGH, et al.,

Plaintiff,

:

Case No. 3:06-cv-129

-vs-

District Judge Thomas M. Rose

Chief Magistrate Judge Michael R. Merz

:

CITY OF TROTWOOD, OHIO, et al.,

Defendants.

REPORT AND RECOMMENDATIONS

This case is before the Court on Motion to Dismiss of Defendant Montgomery County Board of County Commissioners (Doc. No. 22). The Motion was filed October 13, 2006, and served by means of the Court's electronic filing system. Therefore, Plaintiffs' time to respond under S. D. Ohio Civ. R. 7.2 expired on November 6, 2006, and no response has been filed.

The moving Defendant seeks dismissal with prejudice on grounds, inter alia, that the Board of County Commissioners has no control over the filing and prosecution of criminal cases by the Montgomery County Prosecuting Attorney. That is correct as a matter of law. The Prosecuting Attorney is an independently elected public official. While he may be dependent on the county treasury for funding of his office, his decisions to prosecute or not prosecute an alleged crime are not subject to review by the Board of County Commissioners. On that basis, the Amended

Complaint should be dismissed as to the Board of County Commissioners with prejudice.

November 8, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).